

SUBCHAPTER B—FARM CREDIT SYSTEM

PART 609—ELECTRONIC COMMERCE

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AUTHORITY: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub. L. 106-229 (114 Stat. 464).

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Subpart A—General Rules

§ 609.905 Background.

The Farm Credit Administration (FCA) wants to create a flexible regulatory environment that facilitates electronic commerce (E-commerce) and allows Farm Credit System (System) institutions and their customers to use new technologies. System institutions may use E-commerce but must establish good business practices that ensure safety and soundness while doing so.

§ 609.910 Compliance with the Electronic Signatures in Global and National Commerce Act (Public Law 106-229) (E-SIGN).

(a) *General.* E-SIGN makes it easier to conduct E-commerce. With some exceptions, E-SIGN permits the use and establishes the legal validity of elec-

tronic contracts, electronic signatures, and records maintained in electronic rather than paper form. It governs transactions relating to the conduct of business, consumer, or commercial affairs between two or more persons. E-commerce is optional; all parties to a transaction must agree before it can be used.

(b) *Consumer transactions.* E-SIGN contains extensive consumer disclosure provisions that apply whenever another consumer protection law, such as the Equal Credit Opportunity Act, requires the disclosure of information to a consumer in writing. Consumer means an individual who obtains, through a transaction, products or services, including credit, used primarily for personal, family, or household purposes. You must follow E-SIGN's specific procedures to make the required consumer disclosures electronically. E-SIGN's special disclosure rules for consumer transactions do not apply to business transactions. Under E-SIGN, some System loans qualify as consumer transactions, while others are business transactions. You will need to distinguish between the two types of transactions to comply with E-SIGN.

(c) *Specific exceptions.* E-SIGN does not permit electronic notification for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a person's primary residence. These notices require paper notification. The law also requires paper notification to cancel or terminate life insurance. Thus, System institutions cannot use electronic notification to deliver some notices that must be provided under part 614, subpart L of this chapter, Actions on Applications; Review of Credit Decisions, and part 614, subpart N of this chapter, Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal. In addition, E-SIGN does not apply to the writing or signature requirements imposed under the Uniform Commercial Code, other than sections 1-107 and 1-206 and Articles 2 and 2A.

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(d) *Promissory notes.* E-SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version of such a promissory note as the equivalent of a paper promissory note, you must conform to E-SIGN's detailed requirements for transferable records. A transferable record is an electronic record that:

(1) Would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(2) The issuer of the electronic record has expressly agreed is a transferable record; and

(3) Relates to a loan secured by real property.

(e) *Effect on State and Federal law.* E-SIGN preempts most State and Federal statutes or regulations, including the Farm Credit Act of 1971, as amended (Act), and its implementing regulations, that require contracts or other business, consumer, or commercial records to be written, signed, or in non-electronic form. Under E-SIGN, an electronic record or signature generally satisfies any provision of the Act, or its implementing regulations that requires such records and signatures to be written, signed, or in paper form. Therefore, unless an exception applies or a necessary condition under E-SIGN has not been met, an electronic record or signature satisfies any applicable provision of the Act or its implementing regulations.

(f) *Document integrity and signature authentication.* Each System institution must verify the legitimacy of an E-commerce communication, transaction, or access request. Document integrity ensures that the same document is provided to all parties. Signature authentication proves the identities of all parties. The parties to the transaction may determine how to ensure document integrity and signature authentication.

(g) *Records retention.* Each System institution may maintain all records electronically even if originally they were paper records. The stored electronic record must accurately reflect the information in the original record. The electronic record must be accessible and capable of being reproduced

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by all persons entitled by law or regulations to review the original record.

§ 609.915 Compliance with Federal Reserve Board Regulations B, M, and Z.

The regulations in this part require fair practices and meaningful disclosures for certain lending and leasing activities. System institutions must comply with Federal Reserve Board Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending) (12 CFR parts 202, 213, and 226).

Subpart B—Interpretations and Definitions

§ 609.920 Interpretations.

(a) E-SIGN preempts most statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures in business, consumer, or commercial transactions. E-SIGN requires that statutes and regulations be interpreted to allow E-commerce as long as the safeguards of E-SIGN are met and its exceptions recognized. Generally, an electronic record or signature satisfies any provision of the Act or its implementing regulations that require such records and signatures to be written, signed, or in paper form.

(b) System institutions may interpret the Act and its implementing regulations broadly to allow electronic transmissions, communications, records, and submissions, as provided by E-SIGN. This means that the terms address, copy, distribute, document, file, mail, notice, notify, record, provide, send, signature, sent, written, writing, and similar words generally should be interpreted to permit electronic transmissions, communications, records, and submissions in business, consumer, or commercial transactions.

§ 609.925 Definitions.

We provide the following definitions that apply to the Act and its implementing regulations:

(a) *Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic, or similar capabilities.